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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-129719-15

In Re:

Date:
February 01, 2016

Legend:

Taxpayer 1	=
Taxpayer 2	=
Daughter	=
Son	=
Daughter's Trust	=
Son's Trust	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This letter responds to your authorized representative's letter of September 8, 2015, requesting rulings under § 2642(g) and § 2652(a)(3) of the Internal Revenue Code, § 26.2654-1 of the Generation-Skipping Transfer Tax Regulations, and § 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted and the representations made are as follows. In Year 1 (a year after December 31, 2001) Taxpayer 1 created Daughter's Trust. In Year 2, Taxpayer 1 created Son's Trust. Both trusts have GST tax potential. In Year 2, Taxpayer 1 made gifts to both trusts.

Taxpayer 1 and Taxpayer 2 retained a tax professional to prepare their respective Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, to report the gifts. On these returns Taxpayer 1 and Taxpayer 2 elected to treat gifts made by either as made by both under § 2513. The tax professional

inadvertently reported the gifts as made outright to Daughter and Son instead of made to Daughter's Trust and Son's Trust. As a result, Taxpayer 1 and Taxpayer 2 failed to elect out of the deemed allocation of generation-skipping transfer (GST) exemption to the gifts by § 2632(c)(1) on their respective Form 709.

Taxpayer 1 and Taxpayer 2 died in Year 3, with Taxpayer 2 predeceasing Taxpayer 1. The failure to correctly report the Year 2 gifts and to elect out of the deemed allocation of GST exemption by § 2632(c)(1) was discovered after their deaths.

Prior to their deaths, Taxpayer 1 and Taxpayer 2 each created a revocable trust and a will that provided that the bulk of their estates are distributed pursuant to the terms of their respective revocable trust. Paragraph 4.1(a)(2) of Taxpayer 2's revocable trust provides for the creation of a marital trust for the benefit of Taxpayer 1. Paragraph 6.4(l) permits the trustee to divide any trust into two or more trusts for any tax or other purpose.

Paragraph 4.1(b)(2)(v) of Taxpayer 1's revocable trust provides that certain property is to be contributed to a family trust the terms of which are set forth in paragraph 4.6, in the event Taxpayer 2 predeceases Taxpayer 1. Paragraph 6.4(l) permits the trustee to divide any trust into two or more trusts for any tax or other purpose.

The personal representative of the estates of Taxpayer 1 and Taxpayer 2 retained a tax professional to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for each estate.

On the Form 706 for Taxpayer 2's estate the tax professional made the qualified terminal interest property (QTIP) election for property funding the marital trust established under paragraph 4.1(a)(2) of Taxpayer 2's revocable trust. The tax professional also made a reverse QTIP election under § 2652(a)(3) for a portion of this property describing this property as held in a GST exempt marital trust on the Form 706. The tax professional, however, failed to sever the marital trust into a GST exempt and nonexempt marital trust, thus creating the GST exempt marital trust. On the Form 706 for Taxpayer 1's estate the tax professional allocated Taxpayer 1's available GST exemption to a trust described as the GST exempt family trust on the Form 706. The tax professional, however, failed to sever the family trust established by paragraph 4.6 into a GST exempt and nonexempt family trust, thus creating the GST exempt family trust.

The personal representative is requesting the following rulings.

(1) An extension of time under § 301.9100-3 to elect out of the deemed allocation of GST exemption by § 2632(c)(1) to the gifts made to Daughter's Trust and Son's Trust in Year 2.

(2) An extension of time under § 301.9100-3 to retroactively sever, on a fractional basis, the marital trust created under paragraph 4.1(a)(2) of Taxpayer 2's revocable trust into a GST exempt and nonexempt marital trust under § 26.2654-1(b), to make a retroactive reverse QTIP election under § 2652(a)(3) with respect to the exempt trust in the correct amount of Taxpayer 2's remaining GST exemption, and to make a retroactive allocation of GST exemption to the exempt trust in the correct amount of Taxpayer 2's remaining GST exemption.

(3) An extension of time under § 301.9100-3 to retroactively sever, on a fractional basis, the family trust established by paragraph 4.6 of Taxpayer 1's revocable trust into a GST exempt and nonexempt family trust under § 26.2654-1(b) and to make a retroactive allocation of GST exemption to the exempt trust in the correct amount of Taxpayer 1's remaining GST exemption.

Law:

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail and (A) an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than the surviving spouse (or the estate of such spouse); and (B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1).

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" (QTIP) as property: (1) which passes from the decedent; (2) in which the surviving spouse has a qualifying income interest for life; and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Under § 2044(a), any property in which the decedent possessed a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7) is includable in the decedent's gross estate.

Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in § 2632(c)(3)(B).

Section 2632(c)(5) provides that an individual (i) may elect to have § 2632(c) not apply to (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust.

Section 2632(c)(5)(B)(i) provides that an election under § 2632(c)(5)(A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(iii)(C) provides, in part, that to elect out of the deemed allocation of GST exemption to an indirect skip, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing (within the meaning of § 26.2632-1(b)(1)(ii)) of the Form 709 for the calendar year in which the first

transfer to be covered by the election out was made.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent's estate under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust, for purposes of the GST tax, as if the QTIP election had not been made. This election is referred to as the reverse QTIP election. The consequence of a reverse QTIP election is that the decedent remains, for GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST exemption may be allocated to the QTIP trust.

Section 26.2652-2(b) provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1)(ii) provides that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and

(A) The terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) Either -

(1) The new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a non pro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding; or

(2) If the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of § 26.2654-1(a)(1)(ii) if it were paid to an individual.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-1 through 301.9100-3.

Sections 301.9100 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides, in part, that except as provided in § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Ruling 1:

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, personal representative is granted an extension of time of 120 days from the date of this letter to elect out of the deemed allocation of GST exemption by § 2632(c)(1) for the gifts to Daughter's Trust and Son's Trust in Year 2.

The elections should be made on supplemental Forms 709 for Year 2 and filed with the Internal Revenue Service Center Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to each the supplemental Form 709.

Ruling 2:

In this case, as a result of the QTIP election made on the Form 706, the property in the marital trust is includible in Taxpayer 1's gross estate pursuant to § 2044. Taxpayer 1, accordingly, is the transferor of the property in the marital trust for GST tax purposes. The reverse QTIP election made on the Form 706 is not effective because it was not made for all of the property in marital trust. However, if the marital trust is severed in a manner consistent with § 26.2654-1(b)(1)(ii) into two trusts, a GST exempt and nonexempt marital trust, and the value of the property in the GST exempt marital trust is equal to the remaining GST exemption of Taxpayer 2, the reverse QTIP election will be effective for the resulting GST exempt marital trust.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the personal representative is granted an extension of time of 120 days from the date of this letter to sever the marital trust in a manner consistent with the requirements of § 26.2654-1(b)(1)(ii) into a GST exempt and nonexempt marital trust as described herein.

The severance should be reported on a supplemental Form 706 for the estate of Taxpayer 2. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706.

Ruling 3:

In this case, on the Form 706 for Taxpayer 1's estate, the tax professional allocated Taxpayer 1's available GST exemption to a trust described as the GST exempt family trust on that form but failed to sever the family trust into a GST exempt and nonexempt family trust. If the family trust is severed in a manner consistent with § 26.2654-1(b)(1)(ii) into two trusts, a GST exempt and nonexempt family trust, and the

value of the property in the GST exempt family trust is equal to the remaining GST exemption of Taxpayer 1, the allocation will be effective for the resulting GST exempt family trust.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the personal representative is granted an extension of time of 120 days from the date of this letter to sever the family trust in a manner consistent with the requirements of § 26.2654-1(b)(1)(ii) into a GST exempt and nonexempt family trust.

The severance should be reported on a supplemental Form 706 for the estate of Taxpayer 1. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706.

In accordance with the Power of Attorney on file with the office, we have sent a copy of this letter to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: